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IMPLEMENTATION OF THE INTERNATIONAL CONVENTION ON THE SUPPRESSION AND PUNISHMENT OF THE CRIME OF APARTHEID

Reports submitted by States parties under article VII of the Convention

Addendum

BYELORUSSIAN SOVIET SOCIALIST REPUBLIC 1/

[14 May 1984]

1/ The initial, second and third reports submitted by the Government of the Byelorussian SSR (E/CN.4/1277/Add.14, E/CN.4/1415/Add.4 and E/CN.4/1983/24/Add.13) were considered by the Group of Three at its 1979, 1981 and 1984 sessions respectively.

The opposition of the Byelorussian SSR to the policy and practice of apartheid is constant and resolute. As has already been mentioned in previous reports on this matter, the system of public, political, social and economic life which has come into being in the Byelorussian SSR precludes the possibility of the occurrence of discrimination on racial or national grounds.

The victory of the Great October Socialist Revolution put an end once and for all to the exploitation of man by man and brought with it the emancipation of the Byelorussian people, to whom it gave freedom and a full range of rights.

The profoundly democratic nature of the Soviet State of the entire people is reflected in the country's Constitution (Fundamental Law), which proclaims and guarantees both extensive social rights (to work, rest and leisure, housing, education, political assistance, maintenance in old age and the enjoyment of cultural benefits) and political freedoms (freedom of speech, written expression, conscience and association and the right to vote and to be elected.

The principle set forth in the Byelorussian Constitution of citizens' equality in all fields of economic, political, social and cultural life without distinction of race or nationality is unswervingly put into practice. In the Republic, all limitation of rights or establishment of direct or indirect privileges on grounds of race or nationality and all advocacy of racial or national exclusiveness, hostility or contempt are punishable by law (Constitution, article 34). Article 71 of the Criminal Code of the Byelorussian SSR provides that "Any propaganda or agitation for the purpose of arousing racial or national hostility or dissension, and likewise any direct or indirect restriction of the rights of, or the establishment of any direct or indirect privileges for, citizens according to their race or nationality shall be punishable by imprisonment for a term of not less than six months and not more than three years or by exile for a term of not less than two and not more than five years".

Citizens of the Byelorussian SSR are equal before the law without distinction of origin, social or property status, race or nationality, sex, education, language, attitude to religion, type of nature of occupation, domicile or other status (Constitution, article 32).

Equality of rights without distinction of race or nationality is guaranteed in the Byelorussian SSR not only for Soviet citizens but also for other persons within the territory of the Republic. Article 35 of the Constitution provides that "Citizens of other countries and stateless persons in the Byelorussian SSR are guaranteed the rights and freedoms provided by the law, including the right to apply to a court and other States bodies for the protection of their personal property, family and other rights".

The status of foreign citizens in the Republic is regulated by the Act on the Legal Status of Aliens in the USSR, adopted in June 1981. Article 3 of the Act provides, inter alia, that "aliens in the USSR shall enjoy the same rights and freedoms and have the same obligations as citizens of the USSR".

The Constitution of the Byelorussian SSR guarantees inviolability of the person to citizens of the Republic and provides that no one may be arrested except by a court decision or on the warrant of a procurator (article 52).

Article 56 of the Constitution gives citizens the right to lodge complaints against the actions of officials and State or public bodies. Such complaints must be examined according to the procedure and within the time-limits established by law. Actions by officials that contravene the law or exceed their powers and infringe the rights of citizens may be appealed against in a court in the manner prescribed by law. Citizens of the Byelorussian SSR have the right to compensation for damage resulting from unlawful actions by State or public organizations or by officials in the exercise of their duties.

In accordance with article 160 of the Byelorussian Constitution, colleges of advocates are available to give legal assistance to citizens and organizations. In the instances provided for by law, such assistance is given free of charge. Article 161 of the Constitution permits participation in civil and criminal proceedings by representatives of public organizations and of work collectives.

The principle of citizens' equality of rights without distinction of race or nationality was unwaveringly observed during the period under review in the day-to-day activities of all State bodies and public organizations. Citizens of all nationalities participate actively in administering the State. As is proclaimed in article 2 of the Constitution, "All power in the Byelorussian SSR belongs to the people".

The main trend in the development of the political system of Soviet society is the extension of socialist democracy, namely steadily broader participation by citizens in managing the affairs of the State and society, improvement of the machinery of State, heightening of the activity of public organizations, strengthening of the system of people's control, consolidation of the legal foundations of State and public life, greater openness and publicity, and constant responsiveness to public opinion.

Article 46 of the Constitution confers upon citizens of the Byelorussian SSR the right to take part in the management of State and public affairs and in the discussion and adoption of laws and decisions of all-Union and local significance. This right is ensured by the opportunity to vote for, and to be elected to, Soviets of People's Deputies and other elective State bodies, to take part in nationwide discussions and referendums, in people's control, in the work of State bodies, public organizations and local community groups, and in meetings at places of work or residence.

In accordance with article 84 of the Constitution, the elections of deputies to all Soviets of People's Deputies are conducted by secret ballot on the basis of universal, equal and direct suffrage.

Article 85 of the Constitution provides that elections shall be universal: all citizens of the Byelorussian SSR who have reached the age of 18, other than persons legally certified insane, have the right to vote and to be elected. Article 86 of the Constitution embodies the principle of the equality of suffrage: all electors have one vote each and exercise the franchise on an equal footing.

Article 62 of the Constitution makes it the duty of every citizen of the Byelorussian SSR "to respect the national dignity of other citizens and to strengthen the friendship of the nations and nationalities of the multinational Soviet State".

Article 36 of the Constitution provides for the granting of the right of asylum "to foreigners persecuted for defending the interests of the working people and the cause of peace, for participating in the revolutionary and national liberation movement, or for progressive social, political, scientific or other creative activity".

The previous reports by the Byelorussian SSR gave a detailed account of the principles of complete national and racial equality set forth in numerous legislative acts regulating all aspects of social relations. The instruments in question include: the Labour Act, which provides guarantees of admission to employment without distinction of sex, race, nationality, attitude to religion, etc.; the Public Education Act, which guarantees the equality of all citizens as regards access to education; the Judicial System Act, which establishes the equality of all citizens before the law and/or the courts; the Code on Marriage and the Family, which provides that citizens have equal rights in family relations; and the Criminal Code of the Byelorussian SSR, which guarantees the suppression of any acts aimed at violating national and racial equality.

An important role in educating Soviet citizens in a spirit of fraternal friendship among the peoples of the USSR and of proletarian internationalism is played by the study of Soviet law and of its provisions concerning the equality of all races and nationality.

The constant attention given to the development and consolidation of the fraternal alliance among the peoples of our country is reflected in the Decision adopted by the Supreme Soviet of the USSR in 1983 concerning the tasks of Soviets of People's Deputies with regard to the further development of friendship and co-operation among the peoples of the USSR and the internationalist education of the workers.

The Decision stipulates that Soviets of People's Deputies must constantly be attentive to the development and deepening of friendship and co-operation among the peoples of the USSR and take the greatest possible advantage of the opportunities offered by educational establishments, cultural institutions and art for educating citizens in a spirit of mutual respect and friendship among all the nations and nationalities in the country and of internationalism and solidarity with the workers of other countries.

The constitutional reference to the need to educate citizens in a spirit of socialist internationalism has been amplified in the USSR Act on Work Collectives and the Enhancement of their Role in the Management of Enterprises, Institutions and Organizations, which dates from 17 July 1983. Article 17 of this Act provides that work collectives shall take steps to educate their members in a spirit of socialist internationalism and of friendship and brotherhood among peoples.

Elections to Soviets of Peoples' Deputies always provide a striking illustration of the wide-ranging involvement of Soviet people in public life and of the democratic nature of our electoral system. This system, based on the principles of universal, equal and direct suffrage by secret ballot, fully meets the needs of the present stage of the development of society and secures to the people the widest possible opportunity to participate in the electoral process. By their composition, the organs of power in our country give the widest possible representation to all levels of the population.

Questions relating to the struggle against racism, racial discrimination and apartheid are included in the syllabuses of the Republic's secondary schools and higher educational establishments.

The periodic press and other information media continue to contribute actively towards the education of citizens of the Byelorussian SSR in a spirit of intolerance of racism and racial discrimination.

As has been indicated in previous reports, the Byelorussian SSR does not maintain any relations with racist regimes. Its conduct has always been and remains strictly consistent with the decisions and recommendations of the United Nations and other international organs concerning economic, diplomatic and other sanctions aimed at the international isolation of racist regimes.

Guided by Leninist principles of foreign policy, the Byelorussian SSR always consistently defends the principle of the equality of peoples and resolutely opposes all forms and manifestations of discrimination and national oppression. The Republic resolutely condemns racism and apartheid and advocates the steadfast implementation by all States of the decisions on the complete and unconditional eradication of apartheid and all other forms of racism, wherever and however they may occur.

The Byelorussian SSR decisively condemns: the system of apartheid and the South African racist regime's policy of terrorism and mass repression against the indigenous African population; the continuing illegal occupation of Namibia; and the acts of aggression against Angola and other independent African States.

The Byelorussian SSR is a firm supporter of the liberation struggle of the people of Namibia under the leadership of SWAPO, the sole genuine representative of that people. We condemn the attempts by the racists in Pretoria and their patrons to resolve the issue of Namibia outside the United Nations and to impose upon the people of Namibia a neocolonialist, puppet regime. We are in favour of the ending of the South African regime's occupation of Namibia and the immediate granting of independence to that country on the basis of the relevant United Nations resolutions, including Security Council resolution 435. In the interests of such an outcome, the Security Council should take the strongest possible measures against the South African racists, up to and including the introduction of comprehensive mandatory sanctions in accordance with Chapter VII of the Charter of the United Nations.

The representatives of the Byelorussian SSR participate actively in the work of the United Nations organs such as the General Assembly and the Commission on Human Rights that deal with the problems of decolonization and the struggle against racism, racial discrimination and apartheid. They participated in the Second World Conference to Combat Racism and Racial Discrimination (Geneva, 1983) and the International Conference in Support of the Struggle of the Namibian People for Independence (Paris, 1983).

The Byelorussian SSR is a regular contributor to the International Defence and Aid Fund to Assist the Struggle of the Peoples of Africa against Colonialism and Racism.

The Byelorussian SSR has always supported resolutions condemning apartheid and has been among their sponsors in many cases.

The press, radio, television and voluntary organizations in the Byelorussian SSR are carrying on a systematic campaign to provide the population of the Republic with information exposing and condemning the practice and inhuman policy of colonialism, racism and apartheid. The International Day of Struggle Against Racism and Racial Discrimination, the Week of Solidarity with Peoples Struggling against Racism and Racial Discrimination, the Day of Solidarity with Political Prisoners in South Africa, the Week of Solidarity with the Struggle of the Peoples of Southern Africa, the International Day of Solidarity with the Struggling People of South Africa, Namibia Day, etc. are observed annually in the Byelorussian SSR.

Guided by Leninist principles of equal rights and friendship among peoples, the Byelorussian SSR will continue to give every possible support to the peoples struggling for their freedom and independence against colonialism, imperialism and their manifestations - apartheid and racial discrimination.

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Reports submitted by States parties under article VII of the Convention

Addendum

YUGOSLAVIA 1/

[24 July 1984]

1/ The initial and second reports submitted by the Government of Yugoslavia (E/CN.4/1353/Add.8 and E/CN.4/1983/24/Add.7) were considered by the Group of Three at its 1981 and 1983 sessions respectively.

GE.84-18363

I

This report is submitted in reply to the Secretary General's Note No. G/SO.237/5/2 of 10 May 1983.

In accordance with article VII of the Convention, the preceding detailed reports submitted by the Socialist Federal Republic of Yugoslavia on the implementation of the International Convention on the Suppression and Punishment of the Crime of Apartheid (hereinafter called the Convention) illustrated that the national legislation of Yugoslavia had ensured the full implementation of this Convention. Its implementation is ensured by the Constitution of Yugoslavia, as the supreme law of the country, (in its normative part i.e. articles 154, 160, 170, 171, 177) as well as by other laws, particularly the criminal legislation, by incriminating certain acts which might be qualified as the "crime of apartheid" as defined in article II of the Convention.

In the period under review, there have been no major changes in the Yugoslav national legislation with respect to the "crime of apartheid" and the obligations assumed under the Convention. Therefore, this report cannot but confirm once again that the Yugoslav national legislation has fully ensured the implementation of the Convention.

Furthermore, Yugoslavia has been constantly contributing to the implementation of the Convention by pursuing its over-all policy and particularly its foreign policy, based on peaceful coexistence and active co-operation among States and peoples on the footing of equality regardless of their differing social systems. In this context, Yugoslavia's activity is particularly manifested within the Movement of Non-Aligned Countries. Furthermore, it should be stressed that Yugoslavia has rendered its contribution to the implementation of the Convention both on bilateral and international levels, by refraining from any co-operation with and the rendering of any assistance to the countries, such as South Africa, which by their policies encourage the "crime of apartheid".

II

In addition to the aforementioned general information, the second part of this report is related to the data on and answers to the following questions which were assessed as the most relevant during the deliberations on the second periodic report submitted by Yugoslavia: (1) results of trials for the offences under article II of the Convention, and (2) implementation of article XI of the Convention i.e. the offences under article II of the Convention are not considered political criminal offences for the purpose of extradition. The answers to these questions are as follows:

1. In the period 1981-1982, 169 persons were sentenced in Yugoslavia for offences under article II of the Convention; in 1981, 108 persons were sentenced, 107 of them for provoking national, racial or religious intolerance, hatred or discord (art. 134 of the Criminal Code of Yugoslavia), and one person for extending assistance to the perpetrator of the criminal offence (art. 137 of the Criminal Code of Yugoslavia); in 1982, 61 persons were sentenced for provoking national, racial or religious intolerance, hatred or discord (art. 134 of the Criminal Code of Yugoslavia).

2. The Law on Criminal Procedure of Yugoslavia (chapter XXXI, arts. 524 to 540) provides for the institution of extradition of accused and convicted persons. Those provisions specify the conditions under which the accused or convicted person can be extradited to another State and the procedure therefor.

In addition to the provisions of the Law on Criminal Procedure concerning extradition of accused and convicted persons, it should be emphasized that Yugoslavia has concluded a considerable number of bilateral agreements on the extradition of the accused and convicted persons. However, it has not signed any such multilateral international agreement so far.

In cases where such bilateral agreements have been concluded, they will be applied and not the provisions of the Law on Criminal Procedure.

As regards the offences under article II of the Convention, and taking into consideration the provisions of the Law on Criminal Procedure and the solutions provided for in the existing international agreements on extradition of accused and convicted persons, these offences are treated in Yugoslavia as acts subject to extradition of accused and convicted persons. Neither the Law on Criminal Procedure nor the existing bilateral agreements contain specific provisions to that effect, however such a stand emanates from discussions on which criminal offences - according to bilateral agreements - are considered political criminal offences. Thus, in accordance with those agreements and Yugoslav practice, the offences under article II of the Convention are not considered political criminal offences and therefore there are no grounds for denying extradition of accused and convicted persons who committed such criminal offences.

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Addendum

ALGERIA

[6 August 1984]

Algeria, affirming its faith in the dignity and worth of the human person, considers that:

(1) Freedom is a fundamental right of every individual;

(2) It is the State, first and foremost, which has the duty and obligation to protect human rights, without losing sight of the rights of the individual as proclaimed in the Universal Declaration of Human Rights and the subsequent conventions and covenants.

Consequently, for nearly a decade, Algeria has been adding to its legislation by adopting a National Charter (Ordinance No. 76-57 of 5 July 1976), a Constitution (Ordinance No. 76-97 of 22 November 1976) and new laws covering all aspects of social life.

These legal texts, which are in complete conformity and harmony with the principal human rights instruments, are intended to protect and promote the fundamental rights of the individual, thus demonstrating the importance which Algeria attaches to the implementation of all measures to combat discrimination and racism.

These texts complete the legal structure built up in Algeria, which until 1975, was forced to rely on some of the laws that had been in force during the colonial period.

For example, Ordinance No. 73-21 of 5 July 1973 repealed, as from 5 July 1975, all the non-Algerian laws which, upon independence, had been temporarily extended by Act No. 62-57 of 31 December 1962.

The Algerian legislators, however, made that extension subject to preremptory conditions by, for example, providing in article 2 of the above-mentioned Act, that:

"All texts and provisions which run counter to the internal or external sovereignty of the Algerian State or are based on colonialism or discrimination, and all texts and provisions which run counter to the normal exercise of democratic freedoms shall be null and void."

This provision represents the first fruits, at a legal level, of the Algerian people's struggle against all forms of racism and discrimination. It has led to the repeal of a large number of discriminatory laws and regulations.

Thus, the Algerian constitution states that "the Republic of Algeria endorses the purposes and principles of the Charters of the United Nations, the Organization of African Unity and the Arab League".

Moreover, article 92 of the Constitution provides that "the struggle against colonialism, neo-colonialism, imperialism and racial discrimination shall be one of the basic tenets of the revolution".

Algeria, which has proclaimed its attachment to the principles set forth in the Universal Declaration of Human Rights, to which it formally acceded upon independence, is also a party to the main international legal instruments relating to human rights, including the International Convention on the Suppression and Punishment of the Crime of Apartheid, adopted by the General Assembly on 30 November 1973.

As a party to this Convention since 25 June 1982, Algeria submits its first report on its implementation, in accordance with article VII.

Although acts of discrimination are not found in Algerian society, Algeria has taken a series of measures to ensure the effective enjoyment of human rights and fundamental freedoms.

Article 39 of the 1976 Constitution, for example, provides that:

"Fundamental freedoms and human rights and the rights of the citizen are guaranteed."

"All citizens have equal rights and duties."

"Any discrimination based on prejudice as to sex, race or occupation is prohibited."

In addition, article 41 provides that:

"The State ensures the equality of all citizens by suppressing obstacles of an economic, social or cultural nature which restrict equality between citizens, hinder the fulfilment of the individual as a person and prevent the effective participation of all citizens in the organization of politics, society and culture."

As far as legislation is concerned, penal measures have been introduced against any act of racial discrimination in respect of nationals or aliens.

Article 298 of the Criminal Code provides that:

"Any person who defames one or more persons belonging to an ethnic or ideological group, or to a specific religion, shall be liable to imprisonment for one month to one year and to a fine of 300 to 3,000 dinars, when the intent is to incite hatred between citizens or inhabitants."

In article 299, the same Code provides that:

"Any person who insults one or more persons shall be liable to imprisonment for six days to three months and to a fine of 150 to 1,500 dinars or to either of these two penalties."

Insults are expressly defined by the Algerian Criminal Code, article 297 of which provides that:

"Any offensive remark, term of disparagement or invective which does not involve the imputation of any act, is an insult."

"Any alien who is lawfully present in the national territory enjoys the protection granted to persons and to property in conformity with the law and the traditions of hospitality of the Algerian people."

Article 5 of the Civil Code, however, provides that:

"The police and security laws apply to all inhabitants of the territory."

These provisions are general and apply to aliens lawfully present in Algeria, without any reference to a convention being necessary.

With regard to equality before the courts and the guarantees available to any alien charged with a criminal offence, aliens may invoke articles 45 and 51 of the Constitution in the same way as Algerian citizens.

Article 45 provides that:

"No person may be held guilty, except under a law duly promulgated prior to the offence in question."

Article 51 provides that:

"No person may be prosecuted, arrested or detained, except in the cases specified by the law and according to the procedures prescribed therein."

Furthermore, under the long-standing traditions of hospitality and goodwil of Aleria as a country of asylum, any alien who is lawfully present in Algeria has the right to freedom of movement.

In addition, aliens lawfully established in Algeria are entitled to free care, education and teaching. These services are provided by general public bodies and are free.

Various means are employed to publicize the Convention widely and to ensure that the public is aware of the importance of the total elimination of all forms of racial discrimination and the crime of apartheid.

One of the tasks assigned to the cultural revolution in respect of education, instruction, culture and information under the Constitution is "to combat all prejudices as to race, class, sex and manual occupation, as well as any tendency towards anti-social violence, chauvinism and sectarian ideas, and to promote greater solidarity with oppressed peoples who are the victims of segregation or racial disparagement and peoples who are still exploited or were formerly colonized, with a view to a better appreciation of their history, their liberation struggles and their problems of national education, and respect for cultures and civilizations different from our own".

With regard to instruction, a course in civic and moral responsibilities taught in all schools and universities in Algeria is based directly on the principles embodied in the Constitution, with the aim of promoting human rights.

In addition, the International Day for the Elimination of Racial Discrimination has always been celebrated in Algerian schools by an assembly at which teachers read to the pupils and comment on the principles of the International Bill of Human Rights and other subsequent texts, while pointing out the injustices of the policy of apartheid in the light of the policy practised by the South African white minority.

In the area of culture and information, the Algerian film archives, Algerian radio and television and the Algerian press as a whole contribute continuously in various ways (film showings, press articles) to developing understanding of the basic principles of human rights.

Internationally, Algeria, which has always advocated respect for human rights and the rights of peoples, in accordance with the principles embodied in the Charter of the United Nations, continues to strive, with the progressive countries, for the total elimination of racial discrimination and apartheid, which it considers a crime against humanity.

Thus, the Constitution declares that "the complete liberation of Africa forms part of the fight of the Algerian people for the independence of African peoples struggling against colonialism and racial discrimination".

Consequently, in accordance with the principles of its foreign policy and the international commitments which it has entered into, Algeria:

has consistently condemned, and continues to condemn, the inhuman practices of the apartheid regime established by the white minority in South Africa;

supports the establishment of an international penal tribunal as provided for in article V of the Convention and recognizes that all the crimes enumerated in article II of the Convention are of a criminal nature and that the authors of such crimes should be brought before that tribunal;

implements effectively all resolutions and decisions of the General Assembly, the Security Council and other international bodies concerning the imposition of sanctions against the racist regime of South Africa by breaking off all relations (diplomatic, economic, trade or other) with it;

consistently and unwaveringly supports the national liberation movements, including the South West Africa People's Organization (SWAPO), struggling against all forms of domination and subjugation. In this regard, it should be noted that, in April 1981, Algeria, which strives for the attainment of this noble objective within all international and regional bodies, hosted the Extraordinary Ministerial Meeting of the Co-ordinating Bureau of the Non-Aligned Countries on the Question of Namibia.

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Addendum

MADAGASCAR 1/

[20 September 1984]

The International Convention on the Suppression and Punishment of the Crime of Apartheid was ratified by the Democratic Republic of Madagascar under Order No. 77-011, of 31 April 1977, in the same way as many other international conventions relating to human rights.

Madagascar is a democratic country by tradition (Fokolona), where fihavanana (extended kinship) and hospitality are the rule, where eminence lies solely in age, experience and virtue (ny fanany no maha-olona). Hence it was natural for Madagascar to be among the first countries to ratify the International Convention on the Suppression and Punishment of the Crime of Apartheid.

As in its earlier reports under article VII of the Convention, the Democratic Republic of Madagascar cannot fail to point out once again that it has always resolutely condemned the policy of apartheid and it proscribes all forms of discrimination as factors inimical to national unity and independence and to international peace and security.

For example, article 6 of the Constitution, of 31 December 1975, affirms that the law is an expression of the will of the people. The law is the same for all, whether it protects, imposes obligations or punishes.

1/ The initial report submitted by the Government of Madagascar (E/CN.4/1277/Add.13) was considered by the Group of Three at its 1979 session.

Article 12 provides that the State shall ensure the equality of all citizens by:

"...

Proscribing all discrimination based on race, origin, religious creed, level of education, wealth or sex".

These principles of the Constitution take material form in a number of laws, including:

Penal Code, article 115 (Act No.82-013, of 1 June 1982):

"Anyone who, because of a person's origin, colour, sex, family situation, actual or presumed membership or non-membership of a particular ethnic group, nation, race or religion, has knowingly denied that person the enjoyment of a right to which that person is entitled, shall be liable to imprisonment for a period of one month to one year or to a fine of 50,000 to 250,000 francs, or both.

The above penalties shall be doubled if the offences have been committed by a public official or by a citizen in charge of a public ministry in the exercise of or in connection with his functions.

In the cases referred to in the two preceding paragraphs, if the perpetrator of the offence proves that he has acted on the order of his superiors in matters coming within their competence and in which he had to comply with their orders as his superiors, only the superior officers having issued the order shall be liable to the corresponding penalties".

Penal Code, article 59:

"Accomplices in a crime or an offence shall be liable to the same penalty as the persons committing the crime or offence, except where otherwise specified by law".

Similarly, Order No. 62-041, of 19 September 1962, relating to the general provisions of domestic law and private international law, stipulates in:

Article 17: "The rights of the individual are inalienable".

Article 18: "Any unlawful act in breach of the rights of the individual shall entitle the individual concerned to demand termination of the act, without prejudice to any liability on the part of the perpetrator of the act".

Article 19: "A Malagasy national or an alien may be deprived of the exercise of his civil and family rights only by a decision of the courts, under the conditions specified by the law".

Article 20: "An alien in Madagascar shall enjoy the same rights as Malagasy nationals, with the exception of those which are expressly denied to him by law...".

Sometimes, the Constitution and Malagasy law may not make provision for a right or a prohibition set forth in an international covenant or convention.

Here again, however, opportunities exist for the Malagasy courts to apply the international rules relating to human rights:

Article 11 of Order No. 62-041:

"No judge may on any pretext whatsoever refuse to hear a dispute brought before him; in the event of silence, inadequacy or obscurity in the law, the judge may draw on the general principles of law and, where necessary, the customs and traditions of the parties in dispute, provided such customs and conditions are definitely and properly established and do not run counter in any way to public order and morality".

Similarly, article 13 of the Order states that:

"The general principles enunciated in the Preamble to the Constitution of the Malagasy Republic must be observed by judges, who shall in every case ensure respect for and observance thereof under the law in force".

The Preamble sets forth, among other principles: abolition of the exploitation of man by man and of all resulting forms of domination, oppression and alienation; the inherent dignity of the individual; and the freeing of every person and of all mankind.

But here again, under a recent Order, No. 82-019 of 11 August 1982, it is possible to quash a ruling which does not in any way breach (positive) law yet is a breach of the general precepts of justice and equity.

Article 11 of Order No. 82-019:

"... an appeal to vacate a judgement in the interest of the law is admissible in the event of a breach of the general precepts of justice, and particularly the principles of equity, when the judgement in dispute necessarily involves a provision of the law as objective justification therefor".

No case law on the application of this article can be cited as yet, but it is a certainty that, if the appeal judge finds support for his ruling in the principles set forth in international covenants or international conventions, nothing can prevent him from taking account of them as part of the general principles of justice.

Again, the question of extradition is governed by the Act of 10 March 1927 - articles 30 and 509 of the Code of Criminal Procedure.

The Democratic Republic of Madagascar attaches particular importance to the struggle being waged to eliminate racism, racial discrimination and apartheid. Madagascar, together with all justice- and freedom-loving countries throughout the world, celebrates every year the days organized to mark solidarity with the political prisoners in South Africa and to commemorate the events at Soweto, Sharpesville and so on.

The press, radio and television regularly inform the Malagasy people of the inhuman conditions experienced by our brethren in southern Africa. Moreover, the African National Congress (ANC) has a permanent bureau in Madagascar and its task will be more clearly defined by the ministries directly concerned.

As to the importance and the nature of the role played by multinational corporations in maintaining the system of apartheid in southern Africa, the Department of Justice is less qualified than others to give its views on this matter.

At the very most, it would point out that too many economic and strategic interests are at stake (mining resources, strategic products, cheap labour, etc.), and to such an extent that unanimity about securing the complete liberation of the peoples of southern Africa still has a long way to go. Yet liberation is the sine qua non if these countries are to escape from the aberrant system of apartheid and freely enjoy the right to self-determination and to their own wealth and natural resources.

Annex I

NOTE

Concerning the draft Convention on the Establishment of an International Penal Tribunal for the Suppression and Punishment of the Crime of Apartheid and Other International Crimes

Since domestic Malagasy legislation already provides for the punishment of the acts embodied in the definition of apartheid in accordance with article II of the anti-apartheid Convention (cf. document E/CN.4/1426, para. 13), including attacks on the physical security of the individual, murder and torture, or discriminatory activities as covered by article 115 of the Penal Code, it may be stated that the spirit of the draft Convention on the Establishment of an International Penal Tribunal for the Suppression and Punishment of the Crime of Apartheid and Other International Crimes would in no way run counter to the Malagasy legal order.

Madagascar has acceded to all the fundamental instruments relating to human rights, in particular the International Covenants formulated by the United Nations in the context of the Universal Declaration of Human Rights of 10 December 1948, including the International Covenant on Civil and Political Rights. The latter instrument was ratified by the Malagasy Parliament by Act No. 70-001 of 23 June 1970 (JORM of 27 June 1970, p. 1348), together with the Optional Protocol thereto.

Subsequently, the General Assembly of the United Nations adopted a number of conventions relating to the protection of the specific rights of minorities or a particular category of the human community (workers, women, refugees, etc.). Madagascar has acceded to these conventions, which include:

The International Convention on the Elimination of All Forms of Racial Discrimination, adopted in New York on 7 March 1966 (Act No. 58-021 of 17 December 1968, JORM of 21 December 1968, p. 2387);

The International Convention on the Suppression and Punishment of the Crime of Apartheid (Order No. 77-011 of 13 April 1977, JORM of 23 April 1977, p. 967.

Given this situation and in view of the fact that the approach adopted in contemporary international criminal law is that of the "indirect enforcement model", in other words, States assume certain duties through their national systems, it is quite clear that the effectiveness of the international systems established will depend on the genuine will of States parties with regard to their functioning.

Nevertheless, the following observations would appear to be necessary concerning the draft Convention.

PART II. THE PENAL PROCESSES OF THE TRIBUNAL

Article 8 (page 23)

Initiation of process

Paragraphs 2 and 4: If the Procuracy decides to continue further investigation, how will it operate? Will it travel to the State concerned or will it delegate its powers to a national jurisdictional body? In short, what will its modus operandi be? (cf., however, the observation at the end of the second paragraph on page 46).

In addition, how will the Investigative Division determine that a communication is "manifestly unfounded" or not? Will this be a sovereign unappealable decision?

Paragraph 6: What are the criteria for prosecution? In short, it would appear to be necessary to formulate a procedure in this area.

PART IV. TRIBUNAL STANDARDS

Article 19 (page 30)

Standards for rules and procedures

Paragraph 1 (f) (4): What are the "critical" stages at which counsel for the accused will be allowed to be present?

PART V. PRINCIPLES OF ACCOUNTABILITY (PROVISIONS IN THE NATURE OF A GENERAL PART)

Article 25 (page 39)

Exoneration

Paragraph 8 (b): If a person already tried by the national courts of a State party can be retried for the same conduct by the International Court, can one still speak of double jeopardy?

Would this not amount to censure of the decisions of the national courts on the conduct in question? This raises a delicate problem of national sovereignty which may encounter resistance by States parties, with regard to both the co-operation to be extended in the conduct of prosecution proceedings and the execution of adjudications.

In the latter case, would not the execution of sentences in the offender's country of origin but under the jurisdiction of the International Penal Tribunal (art. 31) constitute continuing and indiscreet supervision of the prison system of a sovereign State?